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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,645	02/04/2004	Michael Edward Ross	J6571(C)	3724
201 7590 09/07/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER FRIDIE JR, WILLMON	
			ART UNIT 3722	PAPER NUMBER
			MAIL DATE 09/07/2007	DELIVERY MODE PAPER

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The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10771645	2/4/2004	ROSS, MICHAEL EDWARD	J6571(C)

UNILEVER INTELLECTUAL PROPERTY GROUP  
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BLDG C2 SOUTH  
ENGLEWOOD CLIFFS, NJ 07632-3100

**EXAMINER**

Willmon Fridle

ART UNIT	PAPER
3722	20070904

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Group 3700

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/771,645  
Filing Date: February 04, 2004  
Appellant(s): ROSS, MICHAEL EDWARD

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\*Alan A. Bornstein\*\*  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 5/14/07 appealing from the Office action mailed 1/17/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 2 stand under 35 U.S.C. 102(\*b) as being anticipated by Schwartz (2398257).

Claim 1 is rejected under 35USC102(b) as being anticipated by Schwartz (2398257).

Schwartz (2398257) discloses a chamber (1) by at least one wall containing graphics (the at least one wall being the surface including the graphics "CHEWING GUM"), a label (4-band having overlapping ends 9,10 secured together by any suitable adhesive-col.2, lines 45-50) removably affixed directly to said wall and said graphics (as indicated in figure 8 and col.2, lines 39-44-the band is removably slid as a tube over the package), the label being partially translucent so that a portion of said wall is visible underneath said label (col. 2,lines 12-26), the label and the wall containing graphics which complement each other (col. 2, lines 14-26), wherein said label contains graphics which form a first part of a scene and said wall contains graphics which form a second part of said scene which underlies the first part of said scene ( col. 2, lines 14-26), and wherein said wall and said graphics adhered to said wall remain intact when said label is removed (as seen in figures 1 and 8).

Claims 3-5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz (2398257).

The examiner takes official notice of the use of the claimed elements. Such elements are notoriously old and well known in the art and their use would have been an obvious mechanical design expedient to a skilled artisan.

#### **(10) Response to Argument**

In response to Appellant's argument that Schwartz does not function the same as the claimed invention, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ 1647 (1987).

Appellant argues "that the spaced vertical lines of Schwartz are not "graphics" nor do they complement the image illustrated underlying the wrapper. The skilled person would understand the "graphics" as that term is used in the instant specification..." and that "...the art of record simply does not disclose "complementary graphics" as claimed in the instant case."

The examiner submits that the universally accepted definition of graphics is:

**graphics: The art or science of conveying information through the use of display media, such as graphs, letters, lines, drawings, and pictures.**

***A visual representation such as a photo illustration or diagram. A graphic may contain text, but text by itself is not considered a graphic unless it is done in a stylized fashion.***

In the present case, the spaced vertical lines are by definition graphics and constitute a part of the complementary graphics of the entire assembly.

Further, the vertical lines of Schwartz meet the limitation of claim 1 which states "said label and said wall contains graphics which complement each other, wherein said label contains graphics which form a first part of a scene and said wall contains graphics which form a second part of said scene which underlies the first part of said scene..".

Art Unit: 3722

It is clear from the disclosure and drawings of Schwartz that this is the case.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Willmon Fridie

Primary Examiner


Art Unit 3700

  
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